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Ordoliberalism and the Social Market Economy

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1. Introduction

Contrary to its usage in current political discourse, the term neoliberalism originally referred to those schools of economic thought that opposed laissez-faire liberalism and wanted to assign a more active role to the state. Faced with the economic turmoil of the late 19th and early 20th century – including the poverty of the working class, concentrations of power in the hand of large corporations and multiple monetary and economic crises – neoliberals posited that the government should intervene in private markets in order to uphold competition.

The reform of liberalism was an international movement. Its most important centres have been identified as Chicago, Freiburg, London and Vienna (Köhler and Kolev 2013). An early formulation of the goals of the German neoliberals is Alexander Rüstow's speech given at the 1932 meeting of the German Economic Association. Here, Rüstow outlines a "third way" between state interventionism – including Soviet-style economic planning – and laissez-faire liberalism. He advocates a government that acts in accordance with market forces rather than against them: "What I propose requires a strong state that stands above individual groups and interested parties – a requirement, incidentally, that also needs to be fulfilled if we simply want to guarantee a free market and fair competition with the same rules applied to all" (Rüstow [1932] 2017, p. 148).

The German neoliberal movement is better known today as Ordoliberalism. Its intellectual foundations can be traced back to the Freiburg School of Law and Economics, founded in the 1930s by Walter Eucken, Franz Böhm and Hans Großmann-Doerth. The members of this school

[1] This is the English version of the introductory chapter to the Chinese book edited by Lars P. Feld, Peter Jungen, Zhu Min and Zhou Hong the title of which reads in English: *The Social Market Economy: Compatibility among Individual, Market, Society and State*, Citic Press, Beijing, 2019, ISBN 978-7-5086-8692-9.

aimed at investigating the interdependency of legal-institutional structures and economics.[2] Their theoretical and policy work, which was developed in opposition to National Socialism, had a significant impact on the shaping of Germany's post-WWII economic system, the so-called Social Market Economy. The latter proved a decisive factor in the successful German recovery of the 1940s and 1950s (Giersch et al. 1992).

Ordoliberalism is not a unified theory. In order to place the contributions of ordoliberal authors collected in this volume into context, we want to distinguish between three different strands of ordoliberal thought: First, the Freiburg School of Eucken and Böhm; second, the Social Market Economy as represented by its founding fathers Ludwig Erhard and Alfred Müller-Armack; and third, the sociological liberalism of Rüstow and Wilhelm Röpke.[3] While these groups of authors share important convictions with regard to the theoretical and normative underpinnings of free markets, their positions differ in important respects (sections 2–4).

What about the reception of ordoliberal ideas today? After making the above distinction, we will examine three contexts in which ordoliberal ideas are currently of particular interest. First, ordoliberalism has close similarities with rule-oriented approaches to economic policy more generally and the research programme of constitutional economics specifically. As will be argued, these similarities show the general compatibility of ordoliberal ideas with the international scientific discourse (section 5.1).

Indeed, ordoliberalism may already have influenced economic debates and policy on a supranational level. This is the thrust of two discussions regarding the influence of ordoliberal ideas on European competition law (section 5.2) and the handling of the Eurozone crisis (section 5.3). We will comment on the hypothesis of an "ordoliberalization of Europe" (Blyth 2013, p. 142) as formulated in a number of recent publications, particularly from the field of political science. However, before turning to these recent developments, we begin by examining the origins of ordoliberal thinking at the University of Freiburg.

[2] For an introduction to the research programme of the Freiburg School, see Sally (1996).

[3] Another important scholar linked with ordoliberalism is Friedrich von Hayek. When he assumed his professorship in Freiburg in 1962, he declared that he wanted "to resume and continue the tradition which Eucken and his friends have created" (Hayek [1963] 1967, p. 253). However, Hayek's subsequent work on the emergence and evolution of institutions made him sceptical of deliberate efforts to change the rules of society. This view only intensified after Hayek received the Nobel Memorial Prize in Economic Sciences in 1974. Modern scholarship stresses the fact that the similarities between the ordoliberals and Hayek were particularly strong in the 1930s and 1940s (Kolev 2010).

2. The Freiburg School

The Freiburg School was a collaboration among members of the faculty of law and economics at the University of Freiburg in the 1930s and 1940s. The school's research programme was first outlined in a 1936 manifesto by Eucken, Böhm and Großmann-Doerth entitled "Our task" (Böhm et al. [1936] 1989). The founders organised joint seminars for their students and edited a publication series called "The Order of the Economy". Additional members of the Freiburg School include, among others, Friedrich A. Lutz, Fritz W. Meyer and Leonhard Miksch. To describe the Freiburg School's contribution, we will focus on two aspects: the school's theoretical approach and its policy recommendations.[4]

2.1 The theoretical approach: The economic constitution as the object of study

In their 1936 manifesto, the founders of the Freiburg School declare that "the treatment of all practical politico-legal and politico-economic questions must be keyed to the idea of the economic constitution" (Böhm et al. [1936] 1989, p. 23). The economic constitution (*Wirtschaftsverfassung*) is the framework of (legal) rules that governs the economic life of a community.[5] Instead of describing the interactions of economic agents within existing rules (e.g. on markets), the Freiburg School focuses on describing the effects of different rule frameworks.

The theoretical approach of the Freiburg School is best exemplified by Eucken's *The Foundations of Economics* (Eucken [1940] 1950). In this book, Eucken introduces the term economic system (*Wirtschaftsordnung*) to describe the patterns of economic activity in actual economies past and present. By doing so, he rejects the approach of the German historical school, which views different economies as examples of different "stages" or "styles" of economic development.

According to Eucken, actual economic systems are shaped by their underlying economic constitutions, i.e., the aforementioned "rules of the game" (ibid., p. 81). He illustrates the effects of different rule frameworks by analysing two abstract or pure types of economic system, the

[4] The distinction between the Freiburg School's theoretical paradigm and its policy paradigm is taken from Vanberg (1998).
[5] To use a modern term, the school's emphasis is on the analysis of economic institutions (Acemoglu et al. 2005).

competitive market economy on the one hand and central economic planning on the other. Eucken's critical assessment of the economic effects of central planning is comparable to that of his contemporary Ludwig von Mises (Vanberg 1998).

2.2 The policy paradigm: *Ordnungspolitik* and the competitive order

As we have seen, the theoretical focus of the Freiburg School is on the rules of the game of economic life. Consequently, the school's policy paradigm states that economic policy should concentrate on improving these rules. This approach to economic policy is referred to as ordoliberal policy (*Ordnungspolitik*). It can be distinguished from interventionist policy (*Prozesspolitik*). According to Eucken, the legislator should influence the outcome of markets indirectly by improving the rule framework in which they operate (Eucken [1952] 2004, p. 242).

The ordoliberal approach to policy making can be illustrated by looking at the policy proposals contained in Eucken's work *Grundsätze der Wirtschaftspolitik*. Here, Eucken states that an ideal economic constitution should fulfil two criteria: it should to be both "functioning and humane" (ibid., p. 14). The first criterion refers to economic efficiency. The economic constitution should enable the proper working of markets in order to ensure an optimal provision of consumer goods. The second criterion derives from Eucken's liberal political outlook. To him, a humane economy means that people are free to pursue their own goals within the limits of the economic constitution.

Eucken's emphasis on individual freedom is related to the German historical experience. As outlined by Uwe Dathe (2009), Eucken first became interested in liberal ideas during the time of the Weimar Republic. Being a former conservative, he began to embrace the liberalism of the German People's Party led by Gustav Stresemann. The experience of National Socialism between 1933 and 1945 reinforced the importance of individual freedom in Eucken's thinking. Together with Böhm, he participated in the German resistance movement against Hitler (Rieter and Schmolz 1993).

Eucken's liberalism led him to recommend a particular economic constitution, the so-called competitive order (*Wettbewerbsordnung*). It is based on a number of constitutive principles, the most important of which is the functioning of the price system. Other principles include a stable

currency, open markets, private property, freedom of contract, personal liability and the consistency of economic policy. While Eucken regards these principles as necessary for the implementation of a properly functioning market economy, he concedes that they may not be sufficient. Therefore, the constitutive principles should be supplemented by additional regulative principles. This second set of principles includes anti-monopoly legislation, income redistribution, the internalisation of external effects and, in some narrowly defined cases, minimum wages (Eucken [1952] 2004, pp. 254–304).

3. The Social Market Economy

After WWII, the ideas of the Freiburg School were influential in shaping the economic system of the young Federal Republic of Germany. There are some ways, in which the members of the Freiburg school were able to influence economic policy directly. For example, Eucken, Böhm and Miksch were early members of the Academic Advisory Board to the German Ministry for Economic Affairs. Miksch drafted the 1948 law to abolish price controls. Böhm contributed to an early version of the competition law that came into effect in 1958.

More importantly, however, the members of the Freiburg School had an indirect influence on the development of the Social Market Economy. Their ideas inspired two politicians who were directly responsible for conducting economic policy in post-war Germany, Ludwig Erhard and Alfred Müller-Armack.

Erhard was the director of the administration of the economy of the American and British occupied zones and, from 1949 to 1963, Minister of Economic Affairs of the Federal Republic. In the summer of 1948, he oversaw both the introduction of the *Deutsche Mark* and the end of price controls. Erhard repeatedly emphasised the influence of the ideas of the Freiburg School on his thinking. Looking back in 1961, he wrote: “If there ever was one theory that was able to correctly interpret the signs of the time and whose insights gave a new impetus to both a competitive and social economy, then it was the theory created by the men known today as neoliberals or ordoliberals” (Erhard, quoted in Goldschmidt and Wohlgemuth 2008, p. 267).

As described by Nils Goldschmidt and Michael Wohlgemuth (2008), there are two important aspects, that connect the research programme of the Freiburg School and Erhard’s politics.

First, the historical experience of Weimar and Nazi Germany led Eucken and Erhard to the same conclusion regarding the role of the state in economic policy-making. Instead of catering to special interests or engaging in central planning, they believed that the state should act as an impartial referee who enforces a well-defined set of general rules.

Second, in a related vein, Eucken and Erhard agreed that a free economy is not necessarily competitive. In contrast to the proponents of laissez-faire liberalism, the ordoliberals were convinced that economic systems have to be consciously shaped in order to exhibit the desirable properties ascribed to them by classical political economists such as Adam Smith. Eucken and Erhard were particularly aware that firms have incentives to engage in anti-competitive practices. They contended that such practices should be counteracted by the state in order to protect the interests of consumers.

The term Social Market Economy was coined by Müller-Armack in 1947.[6] He was professor of economics and later state secretary in the Ministry of Economic Affairs. Like Eucken and Erhard, he emphasised the importance of a rule framework that guides economic behaviour. At the same time, Müller-Armack felt that the Freiburg School's focus on the functioning of markets was not enough. As he wrote in 1965: "I gratefully picked up thoughts by Walter Eucken and his circle that aimed at a renewal of competition. The strong emphasis on the competitive order as the means to design economic policy I sure enough always felt to be too narrow. Thus, I additionally called for a system of social and socio-political, yet market-conform measures" (Müller-Armack, quoted in ibid., p. 270).

Müller-Armack argued that competitive markets should be accompanied by measures of social welfare and income redistribution. One reason for this was to ensure political support for the Social Market Economy. While he acknowledged that markets guarantee the most efficient use of resources, he also knew that they lead to uncertainty about individual outcomes. In the opinion of Müller-Armack, the main idea of the Social Market Economy – and the true meaning of the term – was to combine competitive markets with measures to mitigate economic hardships. In this sense, he understood the term as an "irenic" (ibid., p. 271) or integration formula that expresses a balance between economic efficiency and social protection.

[6] For different versions of how this term was originally conceived, see Goldschmidt and Wohlgemuth (2008, pp. 262–264).

Note the difference between the Freiburg School and Müller-Armack in this regard. The members of the Freiburg School believed that the improvement of living conditions is primarily the result of the functioning of markets. Müller-Armack's use of the term integration formula, however, indicates an ongoing tension between economic efficiency on the one hand and the goals of social policy on the other.

4. Sociological Liberalism

The third strand of ordoliberalism is the sociological liberalism of Rüstow and Röpke. Both men had left Germany in 1933 to escape the Nazis. While they remained in contact with the members of the Freiburg School, their work developed in a different direction. Rüstow and Röpke agreed on the importance of free exchange and competition, but focused more strongly on the sociological preconditions of markets, and, more broadly, on the non-economic factors that shape society.

The representatives of sociological liberalism were aware of the shortcomings of traditional liberalism from the point of view of economic theory. Their criticism, however, went much deeper. It was concerned not so much with the material conditions of modern society, but its supposed spiritual emptiness. As described by Jurgen Reinhoudt and Serge Audier, "Röpke … engaged in a sociological critique of *proletarianization* and *Vermassung* [massification], referring to a society of massive scales where any reasonable human dimension was lost and man felt profoundly alienated. … In the same sense, Rüstow argued that man does not live by economic bread alone: man's satisfaction derives from other sources. He insisted that man needs *unity* far more than he needs *freedom*" (Reinhoudt and Audier 2018, p. 29).

Rüstow and Röpke proposed a set of policies to advance the "vital" (ibid., p. 30) or sociological integration of the individual into capitalist society. For example, Röpke was of the opinion that a humane economy required the acceptance of traditional Christian values and a lifestyle similar to that of his rural Swiss exile (Kolev 2017). One does not have to agree with the conservative social philosophy implicit in this proposal in order to appreciate the general validity of Rüstow's and Röpke's argument, namely that markets are embedded in social structures that may or may not support them. As Patricia Commun and Stefan Kolev put it: "A free economy in [Röpke's] view is certainly a necessary, but by far not a sufficient condition for a free society

– instead, other framework layers, especially bourgeois culture defined in terms of virtue ethics, are indispensable for the stability of a free society" (2018, pp. 7–8).

5. Recent Developments in the Reception of Ordoliberal Thought

Given the richness of themes addressed by traditional ordoliberalism and the practical success of the Social Market Economy, it is not surprising that ordoliberal ideas are still the subject of scientific debate. This chapter presents three contexts in which ordoliberalism is of particular interest to date.

5.1 Ordoliberalism as constitutional economics

A recent milestone in the development of ordoliberalism is the work of Viktor Vanberg, who emphasises the similarity between the ordoliberalism of the Freiburg School and James Buchanan's constitutional economics. Both research programmes focus on investigating the working properties of institutional rules. Moreover, both regard the rules of a society as a matter of social – i.e., political – choice (Vanberg 1988). However, regarding the second aspect, constitutional economics has an advantage over traditional ordoliberalism. While the members of the Freiburg School were reluctant to extent their analysis to political processes, constitutional economics explicitly takes them into account.

Constitutional economics is based on two important assumptions. First, as a theoretical science, it is committed to methodological individualism in that it argues that social phenomena have to be explained as the result of the actions of (rational) individual human beings. Second, as an applied science, constitutional economics maintains that the legitimacy of social arrangements can only be derived from the voluntary consent of the individuals involved – a concept that is referred to as normative individualism (Vanberg 2005).

The Freiburg School evaluated the desirability of market outcomes by asking whether they correspond to the wishes of consumers. In a similar way, constitutional economics maintains that political arrangements should be evaluated by asking whether they correspond to citizens' wishes. Therefore, the latter concept – which Vanberg calls citizen sovereignty – can be regarded as a useful extension of the approach of the Freiburg School in the realm of politics.

Incorporating democratic decision-making into the ordoliberal research programme removes some ambiguity as to the source of legitimacy that was present in early ordoliberalism (Nientiedt and Köhler 2016).

In general, ordoliberalism is rather similar to other rule-based approaches to economic policy. This may explain why Public Choice theory was adopted rather quickly in Germany – consider the example of Elisabeth Liefmann-Keil, a student Eucken's, who in 1972 became the first president of the European Public Choice Society. Similarly, the rules vs. discretion debate in macroeconomics – associated with Kydland and Prescott (1977), Barro and Gordon (1983) as well as Taylor (1993) – fell on fertile ground in Germany given the familiarity with ordoliberalism. This is to say that the rule-orientation of ordoliberalism is not specifically German and that ordoliberal ideas, rather than being outdated, are often perfectly compatible with the international scientific discourse.

5.2 The impact on German and European competition law

An important component of the Social Market Economy is Germany's competition law, GWB (*Gesetz gegen Wettbewerbsbeschränkungen*). When coming into effect in 1958, it replaced the Allied antitrust regulations that had prevailed since WWII. The passage of the GWB marked the end of a long debate on how – and if – anticompetitive behaviour should be regulated. In this debate, the ordoliberals had to defend their position not only against economic interest groups, but also against the representatives of laissez-faire liberalism (Köhler and Nientiedt 2017).

The GWB can be interpreted as the implementation of one of Eucken's regulative principles, the principle of anti-monopoly legislation. As noted by David Gerber, the specifics of the law strongly reflect ordoliberal ideas: "The GWB calls for a prohibition of cartels, as had been so vigorously demanded by the ordoliberals for so long. It also includes a variety of measures aimed at preventing the abuse of economic power ... The law's procedural mechanism is also ordoliberal (and far from U.S. ideas) in that it creates a relatively autonomous office ... to enforce the law and virtually excludes private antitrust suits" (Gerber 1994, p. 65).

It has further been maintained that ordoliberalism played a key role in the development of European Union competition law, thus influencing a major European policy area of today. An

important indicator is the presence of Article 86 in the original Treaty of Rome, which prohibits the abuse of a market-dominating position. Gerber notes that this concept did not have an equivalent in other European competition laws (or US antitrust law) at the time. Ernst-Joachim Mestmäcker (2011) adds to Gerber's account by distinguishing between the different approaches to competition law of different ordoliberal scholars.

5.3 Ordoliberalism and the Eurozone crisis

Most recently, ordoliberalism has been blamed for inspiring Germany's controversial approach to handling the Eurozone crisis. This includes the positions taken by Angela Merkel's government on issues such as public spending, structural reforms and monetary policy. The question whether these positions can be explained by adherence to ordoliberal doctrine has spawned a significant literature (e.g. Beck and Kotz 2017; Biebricher and Vogelmann 2017; Hien and Joerges 2017).

In our assessment, the hypothesis of an "ordoliberalization of Europe" holds only in specific areas and should be used with caution. For example, the independence of the European Central Bank (ECB) is often attributed to the ordoliberal principle of monetary stability. However, while the monetary policy of the ECB may have been effective in fighting inflation, Eucken explicitly rejected the notion of an independent central bank (Feld et al. 2015). Similarly, Eucken did not advocate fiscal consolidation at any price (Feld et al. 2018).

On the other hand, it may be argued that German economic policy is informed by ordoliberal principles in a more general sense. As demonstrated by David Schäfer (2016), Eucken's liability principle played an important part in the formation of Germany's preferences regarding the establishment of the EU Banking Union.

Regardless of what conclusion is drawn as to the role of ordoliberalism in shaping European institutions and policies – the current debate has certainly brought new attention to the German tradition established by Eucken and Böhm.

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